

BEFORE THE NATIONAL LABOR RELATIONS BOARD
UNITED STATES OF AMERICA
REGION 19

U.S.F. REDDAWAY, INC.

Employer

and

Case 19-RC-14232

INTERNATIONAL ASSOCIATION OF
MACHINISTS & AEROSPACE WORKERS,
DISTRICT LODGE 751, LOCAL 86

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds¹:

As detailed below, the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and permanent part-time hourly employees engaged in the pick up and delivery of freight, with routes originating out of the Spokane terminal, including dockworkers that load and unload trailers, and yard hostlers; but excluding all line drivers, service employees (including mechanics and fuelers), office clerical employees, sales employees, guards and supervisors as defined in the Act, and all others employees.

Summary

The Employer is an interstate freight carrier servicing numerous western states, including Alaska, and Western Canada, with corporate offices in Clackamas, Oregon. The Employer's Northern Division, which includes the proposed unit, consists of sixteen different

¹ The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein; the labor organization involved claims to represent certain employees of the Employer and; a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

terminals in Alaska, Canada, Idaho, Oregon and Washington. Petitioner seeks a unit including all full-time and permanent part-time pick-up and delivery drivers, dockworkers, and yard hostlers employed at the Employer's Spokane, Washington terminal. The Employer and Petitioner agree that yard hostlers should be included in the unit found appropriate. The Employer's sole contention is that its line drivers must also be included in the unit. Based on the following facts and legal analysis, I reject the Employer's contention and find that line drivers are appropriately excluded in the unit.

Facts

There are two facets to the Employer's operations at the Spokane terminal. One is its line operation, encompassing "over-the-road" distributions to other terminals. The other is its city and dock operations, encompassing all local pick-ups and deliveries, and the loading and unloading of freight at the terminal itself. The Employer employs line drivers to perform its line operations, and pick-up and delivery drivers (P&D drivers, also referred to as "local", or "city" drivers) to haul freight for its city and dock operation. Both P&D and line drivers are required to have a class A commercial drivers license, and both are governed by Department of Transportation regulations governing motor carriers. P&D and line drivers receive the same holidays, vacation and sick leave, and are eligible for the same benefits. Terry Pugh is the Spokane terminal manager. Pugh is responsible for disciplinary actions against all employees, including those not in the proposed unit.

City drivers deliver all freight to and from customers located in or near the greater Spokane metropolitan area, including eastern Washington and the panhandle of Idaho. P&D drivers work during the day, during the time that "normal" businesses are open and doing business. Many of their routes begin between 7 and 10 a.m. The city routes are short, often just a few miles, and in the course of a shift a P&D driver often puts in less than a total of 50 miles. They drive Spokane surface streets, and their job requires that they have a detailed knowledge of Spokane's addresses and geography. The majority of P&D drivers' time is spent handling freight. If the customer has a dock and a forklift, the customer will unload the truck. For customers without a dock, the driver will use a hand truck to move the freight into the customer's facility. City drivers are encouraged to interact with the customers a great deal, as part of the company's focus on quality service. This includes working together with the customer as they load or unload freight, and advising the customer afterwards what freight has arrived and what was done with it. City drivers hook and unhook their own trailers, often numerous times a day. They punch a time clock, and are paid at an hourly rate.

Line drivers are used to haul freight from the Spokane terminal to other terminals in the Employer's network, and back. These runs are much longer, with a guaranteed minimum of 313 miles, and the average being about 400 miles one way. The majority of their driving is freeway driving, and will often include several mountain passes. About 80 percent of these runs are made at night, typically leaving Spokane anywhere from 8 p.m. to 2 a.m. About eighty percent of their runs require an out-of-town layover before making the return trip to Spokane. Line drivers use an Employer-issued credit card to purchase fuel while they are on the road. They communicate with other line drivers via CB radios and cell phones about such things as road and weather conditions. There is no evidence that line drivers regularly interact with P&D drivers or dockworkers.² When a line driver arrives at his or her destination, s/he contacts central dispatch, in Portland, Oregon, for instructions on what to pick up on their return trip. Line drivers do not punch a time clock, and do not earn overtime. They are paid in mileage for

² The P&D drivers who testified professed ignorance of line drivers' schedules or supervisory structure.

driving, which includes pre and post-trip inspection. They spend about 90 to 95 percent of their time behind the wheel, the remainder devoted to paperwork and other non-driving duties, with about 5 percent of that time spent hauling freight. Non-driving duties include chaining, dropping and unhooking trailers, and waiting and breakdown time. For these duties they receive the same hourly rate of pay as P&D drivers, which is based on years of service. They maintain a daily log where they record their hours on driving and non-driving duties, and the time and location of all stops. The log is the basis for calculating their wages for both driving and non-driving duties.

The employer also employs yard hostlers and dock workers. Yard hostlers are responsible for moving the trucks and trailers within the terminal yard, and hooking and unhooking the trailers in preparation for line drivers' routes. Dockworkers are responsible for loading and unloading freight. Occasionally, P&D drivers assist the dockworkers in unloading the freight. Two of the six dockworkers also have shifts as P&D drivers. None of the dockworkers drives line routes. Dockworkers and yard hostlers are paid at an hourly rate. Dockworkers work days, as do the P&D drivers.

Both line drivers and P&D drivers bid for their routes based on bidding seniority. The bid sheet for P&D drivers also includes the positions for dock workers and hostlers. Thus, if dockworker obtains his or her CDL, s/he may bid for a city driver route without losing any bidding seniority. The line route bidding is a separate bid sheet. If a P&D driver opts to transfer to a line driver position, s/he loses any bidding seniority he had as a P&D driver and starts at the bottom of the bidding board as a line driver. The same is true if a line driver opts to transfer to a city driver position. There are also "extra" boards for either line or city runs that a driver can sign up on if s/he wishes to be called on an "on call" basis for extra work that comes up. However, a driver may not have his or her name on both the line extra board and the city extra board at the same time. The record discloses that a number of drivers who had been city drivers made the transition to line driving. The last person who made that switch did so over three years before the hearing. There is no evidence that this was done for the convenience of the Employer; there is no progression from city driver to line driver.

Line drivers earn more than P&D drivers do. In 2001, the majority of line drivers earned between \$50,000 and \$75,000. In contrast, P&D drivers earned between \$29,000 and \$51,000 during that same time period.

There is no evidence of any regular or substantial interchange between line haul and P&D drivers. Several years back, when the Employer's operation was much smaller, P&D drivers drove extra line routes fairly frequently. In the past year, only two P&D drivers took any extra line routes. Before a P&D driver can bid for a line driver route, s/he must have five years of continuous driving without any accidents. No line drivers ever take city routes or perform dock work or yard hostling.

There is no history of collective bargaining at the Spokane terminal. The Employer is party to a collective bargaining agreement with General Teamsters Locals 162, 206, 324, and 962 within the jurisdiction of Joint Council of Teamsters No. 37, and Local 174 in King County, Washington. As it applies to locals in Oregon, under Joint Council No. 37, the agreement covers line drivers, as well as dockworkers and P&D drivers. As it applies to Local 174 in King

County, the agreement covers only dockworkers and P&D drivers, the same unit sought by Petitioner. Thus, the bargaining history presented is inconclusive.³

The Employer's management structure includes the terminal manager, a city and a line dispatcher, two morning supervisors, and an evening supervisor. Each of these management personnel is primarily responsible for supervising a certain work group, with minimal overlap in supervision. Thus, Mike Hamlin is the line dispatcher, responsible for dispatching line drivers to their routes. However, Saturday afternoons, he works with a small crew of city drivers and dockworkers. Keith Huartson is a city dispatcher; he oversees the dispatch of city drivers during the day. Mark Scarlett and Ron Shine are morning supervisors, responsible for supervising the city drivers and dockworkers. Occasionally, the morning supervisor will dispatch line drivers to Montana. Shane Hilsabeck is an evening supervisor; he supervises the P&D and dockworkers on the evening shift. Additionally, Hilsabeck covers Mike Hamlin's shift as a line dispatcher on Monday evenings.

Analysis

The Board has traditionally found over-the-road (line) drivers and local drivers to constitute separate appropriate units "where they are shown to be clearly defined, homogeneous, and functionally distinct groups with separate interests which can effectively be represented separately for bargaining purposes." *Georgia Highway Express*, 150 NLRB 1649, 1651 (1965). In *Decoster Egg Farms*, 223 NLRB 884 (1976), the Board found over-the-road drivers to be distinguishable from other drivers in that the over-the-road drivers were paid by the trip as well as hourly, received advances for out-of-town expenditures, and were required to keep logs and take mandatory rest periods. Similarly, in *Gluck Bros., Inc.*, 119 NLRB 1848 (1958), the Board found long-haul drivers distinguishable from local drivers where the long-haul drivers were paid on a mileage basis, were on a separate payroll, and did not interchange with other employees, while the local drivers drove only short distances, were paid hourly, and shared supervision with non-driver employees. In *Alterman Transport Lines*, 178 NLRB 122 (1969), the Board distinguished local drivers from over-the-road drivers where the local drivers picked up and delivered only in the geographic area served by their terminal, punched a time clock, and made no overnight runs, while the over-the-road drivers had separate supervision, received greater compensation and did not punch a time clock, traveled from terminal to terminal and made frequent overnight trips. In *Memphis Furniture Manufacturing Co.*, 259 NLRB 401 (1981), a craft severance case involving the removal of drivers from a production unit into a separate unit, the Board found over-the-road drivers to be an appropriate separate unit. The drivers spent 95 percent of their time away from the plant, did no plant work, did not load their trucks, had no contact with production and maintenance employees and only occasional contact with truck shop mechanics, had different hours than production and maintenance employees and separate supervision, were paid by mileage, unlike the other employees, and were subject to regulations of the United States Department of Transportation, including required physical examinations and limits on the amount of time devoted to driving within a given period.

Here, the line haul drivers and P&D drivers are eligible for the same benefits, have the same commercial license requirements, and share the supervision of the same terminal manager. However, the shared interests largely end there. Line haul drivers drive long

³ Petitions have been filed at this and other Employer locations. The record does not reflect any Unit *decisions* by the Board covering this Employer, the only information based on prior organizing that would be potentially relevant.

distances over-the-road, are paid by the mile, regularly layover mid-trip, seldom handle freight, spend most of their time doing freeway driving, do not punch a time clock, generally have different front-line supervisors, and predominately work nights. In contrast, P&D drivers punch a time clock, are paid by the hour, earn significantly less than line drivers, spend most of their time handling freight, generally report to different front line supervisors, engage in customer relations, drive short routes over city surface streets, interact with dockworkers, and work days. These clear differences between line and P&D drivers establish them as functionally distinct groups. In accordance with the above cases, I find that they have separate interests which can be effectively represented separately for purposes of collective bargaining.

There are approximately 50 employees in the Unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the Unit found appropriate, at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, DISTRICT LODGE 751, LOCAL 86.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 915 Second Avenue, 29th Floor, Seattle, Washington 98174, on or before April 18, 2002. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement

shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (206) 220-6305. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

NOTICE POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by April 25 2002. [Because of delays of US Mail directed to US government addresses in D.C., use of alternative delivery modes is strongly suggested].

DATED at Seattle, Washington, this 11th day of April 2002.

Paul Eggert, Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174

440-1760-6200